

Your Committee, to which this proposal was referred, has amended the proposal to read as follows and recommends its adoption as amended.

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CITY COUNTY COUNCIL

PROPOSAL NO. 371, 2009

CITY OF INDIANAPOLIS-MARION COUNTY, INDIANA

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INTRODUCED: 10/05/2009

REFERRED TO: Community Affairs Committee

SPONSOR: Councillors Hunter, Mansfield, Evans and Malone

DIGEST: amends the Code with respect to nonsmoking areas

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SOURCE:

Initiated by: Councillors Hunter and Mansfield

Drafted by: Councillor Mansfield

LEGAL REQUIREMENTS FOR ADOPTION:

Subject to approval or veto by Mayor

PROPOSED EFFECTIVE DATE:

Adoption and approvals

GENERAL COUNSEL APPROVAL: \_\_\_\_\_

Date: October 1, 2009

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CITY-COUNTY GENERAL ORDINANCE NO. , 2009

A PROPOSAL FOR A GENERAL ORDINANCE amending Sec. 616 with respect to nonsmoking areas.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE  
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The "Revised Code of the Consolidated City and County," specifically Sec. 616-102 is be and is hereby amended by inserting the underlined text and deleting the stricken-through text, to read as follows:

Sec. 616-102. Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

(a) "Ashtray" means any receptacle that is used for disposing of smoking materials, including, but not limited to, ash and filters.

~~(a)~~(b) "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including, but not limited to, retail establishments where goods or services are provided to the public, and other entities where accounting, counseling, legal, medical, dental, engineering, architectural, or other professional services are delivered.

~~(b)~~(c) "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services.

~~(c)~~(d) "Employer" means a person, business, association, municipal corporation, trust, or nonprofit entity that employs the services of one or more individual employees.

~~(d)~~(e) "Enclosed Area" means all space closed in by a roof, ceiling, or other overhead covering of any material, and walls or other side coverings of any material on at least two sides with appropriate openings for ingress and egress.

~~(e)~~(f) "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. The term "Health Care Facility" shall include all waiting rooms, hallways, private rooms, semi private rooms, and wards within health care facilities.

~~(f)~~(g) "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles.

~~(g)~~(h) "Public Place" means an enclosed area, whether owned publicly or privately, to which the public is invited or in which the public is permitted.

~~(h)~~ "Retail Tobacco Store" means a retail store:

- ~~(1) utilized primarily for the sale of tobacco and tobacco-related products including, but not limited to, cigarettes, cigars, tobacco, pipes, cigarette paper, and lighters;~~
- ~~(2) that is not licensed for the consumption of meals or alcoholic beverages on the premises or operated in conjunction with another business that is licensed for the on-premises consumption of meals or alcoholic beverages; and~~
- ~~(3) in which the sale of tobacco and tobacco-related products accounts for not less than 66% of the store's gross sales.~~

~~"Retail Tobacco Store" does not include a tobacco department of a larger commercial establishment such as a grocery store, department store, or discount store.~~

(i) "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

(j) "Smoking" means the carrying or holding of a lighted cigarette, cigar, pipe, or any other lighted smoking equipment, the use of an electronic cigarette (also known as an e-cigarette). or the inhalation or exhalation of smoke from any lighted smoking equipment. "Smoking" does not include the burning of incense.

(k) "Sports Arena" means sports pavilions, stadiums, athletic fields, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise or recreation, participate in athletic competition, or witness sports or other events.

~~(l)~~ "Tobacco bar" means a business that:

- ~~a. offers alcoholic beverages for sale to customers for consumption on the licensed premises pursuant to a Type 210 retailer permit issued by the Indiana Alcohol & Tobacco Commission;~~
- ~~b. does not admit customers or hire employees who are less than twenty-one (21) years old;~~
- ~~c. generated ten percent (10%) or more of its total annual gross income from the on-site sale of tobacco products in the calendar year end.~~

SECTION 2. The "Revised Code of the Consolidated City and County," specifically Sec. 616-204 is hereby amended by inserting the underlined text and deleting the stricken-through text, to read as follows:

Sec. 616-204. Exceptions.

(a) The following areas shall be exempt from the provisions of Sections 616-201 through ~~616-203~~616-202:

- (1) Private residences, except when used as a licensed child care, adult day care, or health care facility.
- (2) ~~Family owned and operated businesses in which all employees are related to the owner, and offices of self-employed persons in which all employees are related to the self-employed person, but only if the enclosed areas these businesses and offices occupy are not open to the public.~~
- (3) ~~Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.~~
- (4) ~~Retail tobacco stores.~~
- (5) ~~Private and semi-private rooms in nursing homes and long term care facilities that are occupied by one (1) or more persons, all of whom have requested in writing to be placed in a room where smoking is permitted.~~
- (6) Any vehicle used by an employee while in the service of an employer when the vehicle is occupied only by that employee, and the vehicle is not used by other employees at any other time.
- (7) ~~Any tobacco bar.~~
- (8) ~~Any bowling alley.~~
- (9) ~~Any bar or tavern that:~~
  - a. ~~Holds a beer, liquor, or wine retailer's permit under the laws of this state;~~
  - b. ~~Allows no customer to enter at any time who is under the age of eighteen (18);~~
  - c. ~~Employs no person under the age of eighteen (18);~~
  - d. ~~Is not physically located within a business otherwise required to be smoke free by this Chapter;~~
  - e. ~~Has provided notice by sending notice to the Marion County Health Department as part of its annual application for a retail food establishment license; that it intends to allow smoking, intends to serve only customers over the age of eighteen (18), and that it is otherwise entitled to an exemption under this Section, provided however, that an election for this exemption may be made no more than once in a calendar year.~~
- (10) ~~Any business that:~~
  - a. ~~Is exempt from federal income taxation under 26 U.S.C. § 501(c);~~
  - b. ~~Is a "club" as that term is defined by Ind. Code § 7.1-3-20-1, or a "fraternal club" as that term is defined by Ind. Code § 7.1-3-20-7;~~
  - c. ~~Holds a beer, liquor, or wine retailer's permit under the laws of this state; and~~
  - d. ~~Provides food or alcoholic beverages only to its bona fide members and their guests.~~

(3) Tobacco businesses licensed under Chapter 986 of this code.

(b) None of the areas in the preceding subsection shall be exempt from the provisions of Sections 616-201 through 202 if the smoke from smoking enters any area where smoking is otherwise prohibited by this Chapter.

~~(c) No business shall be exempt under this section unless it occupies the entire building or structure where it is located.~~

(c) Any business claiming an exemption pursuant to this Section shall provide to any enforcement agency listed in Section 616-401(a) within three (3) business days of demand, adequate written proof that it qualifies for the exemption claimed. Such written proof shall be certified under the penalties for perjury by an authorized representative of the business.

SECTION 3. The "Revised Code of the Consolidated City and County" is amended by adding a new Section 616-205 to read as follows:

Sec. 616-205. Reasonable distance.

Smoking shall be prohibited within twenty-five (25) feet of an entrance or opening to an enclosed area where smoking is prohibited, so as to insure that smoke from smoking does not enter the area through entrances, windows, ventilation systems, or other means.

SECTION 4. The "Revised Code of the Consolidated City and County," specifically Sec. 616-301 is hereby amended by inserting the underlined text and deleting the stricken-through text, to read as follows:

Sec. 616-301. PostingAdditional requirements.

(a) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Chapter by the owner, operator, manager, or other person having control of the area.

(b) Any establishment exempted from the Chapter under Section 616-205(a)(4), (7), (8) or (9) shall clearly and conspicuously post the following sign at every entrance: "Warning: This is a Smoking Establishment".

SECTION 5. ~~The "Revised Code of the Consolidated City and County," specifically Sec. 616-401 be and is hereby amended by inserting the underlined text and deleting the stricken through text, to read as follows:—Section 616-401 of the "Revised Code of the Consolidated City and County," as amended by General Ordinance No. 63, 2009 with an effective date of January 1, 2010, regarding enforcement of restrictions on smoking, hereby is amended by the deletion of the language that is stricken-through, and by the addition of the language that is underscored, to read as follows:~~

Sec. 616-401. Enforcement.

(a) This Chapter shall be enforced by:

(1) ~~the director of the Department of Metropolitan Development defined in Section 231-211, or the director's designee, the deputy director of the department of code enforcement, division of inspections;~~

~~(2) the administrator of the division of compliance defined in Section 231-306,~~

~~(3) the administrator of the environmental services defined in Section 511-302,~~

~~(4)~~ (2) fire department personnel authorized to conduct fire inspections in accordance with Section 591-221, and and

(5) the Administrator and building inspectors defined in Section 730-501., and

(6) (3) the director of the division of public health, the director's authorized representative, a supervisor in the division, or an environmental health specialist of the Health and Hospital Corporation of Marion County.

(b) Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the Corporation Counsel defined in Section 202-101, or with the City Prosecutor referred to in Section 103-5.

(c) An owner, manager, operator, or employee of an establishment regulated by this Chapter shall inform persons violating this Chapter of the appropriate provisions thereof and shall ask those persons to refrain from smoking.

~~(d) For a bar or tavern that elects to be exempted under the provisions of Sec. 616-205(a)(8), it shall be the duty of the owner, manager, or operator to ensure that no persons under the age of eighteen (18) are allowed to enter, except as provided in that section.~~

SECTION 6. The Revised Code of the Consolidated City and County be, and is hereby, amended by adding a new Chapter 986, to read as follows:

#### CHAPTER 986 – TOBACCO BUSINESSES

##### Sec. 986-101. Purpose

It is the purpose of this chapter to regulate certain business where use of tobacco products is permitted to promote the health, safety and general welfare of the citizens of Marion County.

##### Sec. 986-102. Definition.

"Tobacco Specialty Bar" means a business:

(a) that is licensed to sell alcoholic beverages pursuant to a Type 210 retailer permit issued by the Indiana Alcohol and Tobacco Commission for on-premises consumption and in which the service of food is only incidental to the consumption of such beverages and the sale of cigars or Hookah tobacco,

(b) that is engaged in the business of selling cigars or Hookah tobaccos and where at least \$100,000 or fifteen percent (15%) or more of its total annual gross income is derived from the on-site sale of cigars or Hookah tobaccos, and

(c) that is not physically located within a business otherwise required to be smoke free.

Tobacco vending machine sales shall not be considered as part of the revenue from cigars and/or humidior rental.

##### Sec. 986-201. Licenses authorized.

A tobacco business wishing to permit smoking at its business location may apply to the license administrator for a license as a Tobacco Specialty Bar, by making application under this Chapter.

##### Sec. 986-202. Application for Tobacco Business License.

(a) The application for a tobacco business license under this chapter shall be filed by the owner of the business and shall contain the following information which shall be verified by the owner under penalties for perjury:

(1)An application by a tobacco specialty bar shall include information that it meets the definition in Sec. 986-102(l), that it permits no one under the age of twenty-one years to enter its business,

that it employs no one under the age of twenty-one years, is not physically located within a business that is otherwise required to be smoke free by Chapter 616, and has notified the Marion County Health Department that it intends to allow smoking on the premises.

(2) The application shall be accompanied by a fee of \$250.00.

**Sec. 986-203. License.**

If the license administrator determines that the applicant qualifies for a tobacco license under this Chapter, the license shall be issued for the remainder of the calendar year upon payment of the annual license fee of \$1,000 for a tobacco specialty bar. The license may be renewed annually upon application by the business demonstrating it still qualifies under this Chapter.

**Sec. 986-204. Initial applications and limitations on licenses.**

Initial applications for tobacco business licenses under this chapter shall be filed on or before December 31, 2009. The number of licenses issued under this chapter shall be limited to the number of qualified applications received on or before December 31, 2009.

**Sec. 986-205.**

Nothing in this chapter shall be deemed to restrict or require a license for the lawful sale of tobacco products where smoking is not permitted.

**SECTION 6. 7.** Notwithstanding the provisions of Sec. 616-401 as amended by SECTION 5 of this ordinance, Chapter 616 shall be enforced prior to January 1, 2010 by the following:

- (a) the director of the department of metropolitan development defined in Sec. 231-211, or the director's designee;
- (b) the administrator of the division of compliance defined in Sec. 231-306;
- (c) the administrator of environmental services defined in Sec. 511-302;
- (d) fire department personnel authorized to conduct fire inspections in accordance with Sec. 591-221;
- (e) the administrator and building inspectors defined in Sec. 730-501;
- (f) and the director of the division of public health, the director's authorized representative, a supervisor in the division, or an environmental health specialist of the Health and Hospital Corporation of Marion County.

**SECTION 8.** The expressed or implied repeal or amendment by this ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.

**SECTION 9.** Should any provision (section, paragraph, sentence, clause or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the Council in adopting this ordinance. To this end the provisions of this ordinance are severable.

**SECTION 10.** This ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

The foregoing was passed by the City-County Council this \_\_\_\_\_ day of \_\_\_\_\_, 2009, at \_\_\_\_\_ p.m.

ATTEST:

\_\_\_\_\_  
Bob Cockrum  
President, City-County Council

\_\_\_\_\_  
Melissa Thompson  
Clerk, City-County Council

Presented by me to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2009, at 10:00 a.m.

\_\_\_\_\_  
Melissa Thompson  
Clerk, City-County Council

Approved and signed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Gregory A. Ballard, Mayor